

STATE OF MICHIGAN
COURT OF APPEALS

HASTINGS MUTUAL INSURANCE
COMPANY, ROOSEVELT JONES, JIMMY
LAMAR, and ROOSEVELT JONES
LANDSCAPING,

UNPUBLISHED
June 24, 2014

Plaintiffs-Appellants,

v

48TH DISTRICT COURT,

No. 314571
Oakland Circuit Court
LC No. 2012-129238-AS

Defendant-Appellee.

Before: DONOFRIO, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

In this case involving a victim's right to restitution, plaintiff, Hastings Mutual Insurance Company, appeals by right the circuit court's order dismissing Hastings Mutual's complaint for superintending control over defendant, 48th District Court. On appeal, we agree that the district court violated its clear legal duty to protect the victims of crime by failing to order full restitution to all victims. Despite the plain violation of Hastings Mutual's constitutionally protected right to restitution, under the unique facts of this case, we conclude that the circuit court did not err to the extent that it refused to order the district court to amend the order of probation. Nevertheless, we agree that the circuit court erred when it dismissed Hastings Mutual's complaint without addressing its request for prospective relief. Accordingly, we affirm in part, reverse in part, and remand for reconsideration of Hastings Mutual's request for prospective relief.

I. BASIC FACTS

Plaintiffs, Roosevelt Jones and Jimmy Lamar, do business as Roosevelt Jones Landscaping. Jones and Lamar owned a Ford F-250 truck with a plow, which they insured through Hastings Mutual. In December 2008, someone stole the F-250 from Lamar's residence and Hastings Mutual compensated Jones and Lamar for the loss.

In May 2010, Hastings Mutual learned that police officers had recovered the stolen F-250. Because the truck had been stripped, Hastings Mutual sold it for salvage. After the salvage, Hastings Mutual still had a total loss of more than \$13,000. Hastings Mutual also learned that officers had arrested Robert Judge in connection with the recovery of the truck. Hastings Mutual sent the prosecutor a letter outlining its losses and requesting restitution in June 2010.

Judge pleaded guilty to a misdemeanor charge of receiving and concealing stolen property with a value of \$200 or more, but less than \$1,000, in July 2010. See MCL 750.535(4)(a). In September 2010, the district court sentenced Judge to serve one year on probation and ordered him to pay \$4,120 in restitution to Jones and Lamar. The district court did not order Judge to pay restitution to Mutual Hastings. Later that same month, Judge paid the required restitution to Jones and Lamar.

Hastings Mutual contacted the prosecutor's office after it learned that Judge had been placed on probation and ordered to pay restitution to the other victims. Hastings Mutual asked the prosecutor to request that Judge's order of probation be amended to include restitution for Hastings Mutual. The prosecutor requested a restitution hearing in August 2011. Hastings Mutual appeared for the hearing in September 2011, but the district court did not hold the hearing and refused to amend Judge's order of probation. Judge was discharged from probation later that same month.

In September 2012, Hastings Mutual filed a complaint for superintending control with the Oakland County Circuit Court. Hastings Mutual asked the circuit court to exercise its power of superintending control over the district court to order the district court to amend Judge's order of probation to include restitution for Hastings Mutual. It also asked the circuit court to order the district court to order full restitution, as required by Michigan law, in all future cases.

After the circuit court took no action on Hastings Mutual's complaint for superintending control, Hastings Mutual moved for entry of an order of superintending control in January 2013. The circuit court, in response, dismissed Hastings Mutual's complaint. The circuit court dismissed Hastings Mutual's complaint because Hastings Mutual purportedly failed "to assert, factually or legally, that this Court can exercise superintending control over a closed case against a Defendant who was discharged from probation", failed "to establish that an error of law occurred in the lower court's denial to amend restitution", and failed "to establish . . . that no other adequate remedy at law is available to" Hastings Mutual. The circuit court did not address Hastings Mutual's request for an order compelling the district court to order full restitution in future cases.

Hastings Mutual now appeals to this Court.

II. SUPERINTENDING CONTROL

A. STANDARDS OF REVIEW

This Court reviews a circuit court's decision to dismiss a complaint for superintending control for an abuse of discretion. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 347; 675 NW2d 271 (2003); MCR 3.302(E)(3). A circuit court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Thomai v MIBA Hydramechanica Corp*, 303 Mich App 196, 215; 842 NW2d 417 (2013). This Court, however, reviews de novo whether the circuit court properly interpreted and applied the relevant statutes and court rules. *Brecht v Hendry*, 297 Mich App 732, 736; 825 NW2d 110 (2012).

B. CLEAR LEGAL DUTY AND ADEQUATE REMEDY

We shall first address Hastings Mutual's contention that the circuit court erred when it determined that Hastings Mutual had not established that the district court had a clear legal duty to order restitution and that Hastings Mutual failed to establish that it had no adequate legal remedy other than to seek superintending control.

Michigan's circuit courts have superintending control over inferior courts, such as the district court. *Dep't of Public Health v Rivergate Manor*, 452 Mich 495, 500; 550 NW2d 515 (1996). The power to exercise superintending control "is an extraordinary remedy generally limited to determining whether a lower court exceeded its jurisdiction, acted in a manner inconsistent with its jurisdiction, or failed to proceed according to law." *In re Credit Acceptance Corp*, 273 Mich App 594, 598; 733 NW2d 65 (2007). To establish the need for superintending control, the plaintiff must show that the inferior court "failed to perform a clear legal duty" and that he or she had no "adequate legal remedy" to redress the failure. *In re Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 134; 503 NW2d 885 (1993).

As our Supreme Court recently reiterated, in Michigan, the victims of crime have a constitutionally and statutorily guaranteed right to be paid restitution from those persons who harm them through their criminal course of conduct. *People v Garrison*, ___ Mich ___, ___; ___ NW2d ___ (2014), citing Const 1963, art 1, § 24, the crime victim's rights act, MCL 780.751 *et seq.*, and MCL 769.1a. Because crime victims have an absolute right to full restitution, trial courts do not "have discretion to order a convicted defendant to pay restitution; it must order the defendant to pay restitution and the amount must fully compensate the defendant's victims." *People v Allen*, 295 Mich App 277, 281; 813 NW2d 806 (2012). Indeed, as this Court has explained, the Legislature's decision to require "full restitution" in every criminal conviction effectively precludes trial courts and prosecutors from bargaining away a victim's right to restitution. See *People v Ronowski*, 222 Mich App 58, 61; 564 NW2d 466 (1997) ("Because restitution is now mandatory, it is no longer open to negotiation during the plea-bargaining or sentence-bargaining process, and defendants are on notice that restitution will be part of their sentences."). The statutes governing restitution must also be liberally construed to give effect to the Legislature's clear intent—namely, "to shift the burden of losses arising from criminal conduct—as much as practicable—from crime victims to the perpetrators of the crimes." *Allen*, 295 Mich App at 282.

Here, Judge pleaded guilty to a misdemeanor charge of receiving and concealing stolen property related to the theft of the truck insured by Hastings Mutual. See MCL 750.535(4)(a). Therefore, as part of Judge’s sentence, the district court had a duty to order Judge to pay “full restitution” to every victim harmed by Judge’s “course of conduct” that gave rise to Judge’s misdemeanor conviction. MCL 769.1a(2).¹ Because the district court elected to sentence Judge to serve probation, the district court had to make the payment of full restitution a condition of his probation. MCL 769.1a(11).

Hastings Mutual asked the district court—directly by letter and indirectly through the prosecutor—to comply with Michigan law and order Judge to pay full restitution to Hastings Mutual. It also supported its claim for restitution by presenting documentary evidence to establish that it suffered a financial loss arising from the course of conduct that gave rise to Judge’s conviction and the amount of the loss. See MCL 769.1a(1)(b) (defining victim to include business entities that suffer a “financial harm”) and MCL 769.1a(2) (stating that the court “shall order” the defendant to make “full restitution to any victim of the defendant’s course of conduct that gives rise to the conviction”). Nevertheless, the district court refused to amend Judge’s order of probation to include restitution for Hastings Mutual. The district court did not even provide Hastings Mutual with the opportunity to establish its right to restitution at a hearing. Accordingly, the circuit court plainly erred when it determined that Hastings Mutual failed to establish that the district court had a clear legal duty to act and erred as a matter of law by refusing to do so. *In re Recorder’s Court*, 443 Mich at 134.

In Michigan, the victims of crime have no right to move to correct a defendant’s judgment of sentence or appeal the defendant’s conviction and sentence. See MCL 770.3(1) (providing that an aggrieved party—that is, the prosecutor or defendant—in a criminal case may appeal the final judgment); MCL 770.12(1) (granting the people a limited ability to appeal of right in a criminal case); MCR 6.429(A) (providing that either party to a criminal proceeding may move to correct an invalid sentence). As such, Hastings Mutual could not redress its grievance by filing an appeal. See *Dep’t of Public Health*, 452 Mich at 500.

This Court has also recognized that the statutory provisions for restitution constitute a separate and distinct compensatory scheme from that provided in a civil proceeding for damages. *People v Dimoski*, 286 Mich App 474, 479-482; 780 NW2d 896 (2009). The right to restitution provides victims with additional protections beyond those provided by a judgment in a civil proceeding. An order of restitution remains effective until paid in full and automatically constitutes a judgment and lien against the defendant’s property. MCL 769.1a(13). Further, the trial court and probation officer assigned to the defendant’s case have significant authority to compel compliance with the order. MCL 769.1a(15). For that reason, a victim is more likely to

¹ On appeal, Hastings Mutual repeatedly cites article 1 of the crime victim’s rights act, MCL 780.751 through MCL 780.775, but that article applies to felony convictions and convictions that can be punished by imprisonment for more than 1 year. See MCL 780.752(1)(b). The restitution provisions applicable to ordinary misdemeanors, as opposed to serious misdemeanors, see MCL 780.811(1)(a), is MCL 769.1a.

recover his or her losses with a restitution order. *Dimoski*, 286 Mich App at 482. Consequently, the circuit court erred when it determined that Hastings Mutual failed to establish that it had no adequate legal remedy for the district court's refusal to order restitution other than to seek superintending control. The only remedy available to a victim aggrieved by a trial court's decision to refuse restitution is to ask a superior court to exercise its power of superintending control to order the inferior court to comply with the statutory provisions governing restitution.

C. AMENDING AN ORDER OF PROBATION

We shall next address the circuit court's determination that Hastings Mutual failed to establish that the circuit court had the authority to exercise superintending control over a "closed case against a Defendant who was discharged from probation." On appeal, Hastings Mutual argues that it timely requested the amendment of the order of restitution before Judge completed his probation and, in any event, because an order of restitution remains effective until paid in full, the district court has the authority to amend the order of restitution at any time.

Although Hastings Mutual cited the restitution provision applicable to felonies, see MCL 780.766(13), it is true as well for orders of restitution involving misdemeanors that the order remains "effective until it is satisfied in full." MCL 769.1a(13). In this case, the district court ordered Judge to pay \$4,120 in restitution. As such, that order of restitution remained effective until Judge paid it in full, which he did before Hastings Mutual filed its complaint for superintending control. Therefore, the question is whether the circuit court could properly exercise superintending control to order the district court to modify Judge's probation by amending the completed order of restitution or entering a new order of restitution.

In *People v Marks*, 340 Mich 495; 65 NW2d 698 (1954), our Supreme Court addressed a trial court's authority to modify the terms of probation by extending the term and adding restitution. In that case, Charles G. Marks, Jr. was found guilty of felonious operation of an automobile after he injured two pedestrians. *Id.* at 496. In May 1949, the trial court sentenced Marks to serve 3 years on probation. *Id.* The injured parties later obtained civil judgments against Marks, which went unsatisfied. *Id.* at 497. After Marks completed his probation, his probation officer petitioned the trial court to extend Marks' period of probation by 2 years and order him to pay reasonable restitution to the two injured pedestrians. *Id.* The trial court granted the officer's petition over Marks' objection and ordered Marks to serve an additional 2 years of probation and ordered him to pay a total of \$2,500 in restitution to each injured pedestrian. *Id.* at 498.

On appeal, our Supreme Court had to determine whether the trial court had jurisdiction to extend Marks' term of probation and order him to pay restitution after he completed the original term of probation. *Id.* Whether the trial court had jurisdiction, the Court stated, must be determined by the statute granting trial courts the authority to order probation. *Id.* The Court noted that the Legislature granted trial courts the authority to order up to two years of probation for convictions of offenses other than felonies and up to five years of probation for convictions of felonies and provided that the order of probation was "at all times alterable and amendable, both in form and in substance." *Id.* at 498-499, quoting 1948 CL 771.2. Because the Legislature gave trial courts the authority to alter or amend both the form and substance of an order of probation, our Supreme Court determined that a trial court can permissibly alter the conditions

and length of probation at any point within the maximum periods set under 1948 CL 771.2. *Id.* at 501. In Marks' case, the trial court had the authority to extend Marks' period of probation for an additional two years and order him to pay restitution, despite the fact that Marks had completed the original period of probation, because the trial court acted within the five-year period applicable to probation for felony convictions. *Id.* at 501-502.

Under current law, the Legislature has maintained the limits on a sentencing court's authority to impose a sentence of probation. As was the case in *Marks*, if "the defendant is convicted of a felony, the probation period shall not exceed 5 years." MCL 771.2(1). But if the defendant is convicted, as is the case here, "for an offense that is not a felony, the probation period shall not exceed 2 years." MCL 771.2(1). The court's authority to alter the terms and conditions of probation, however, remains as broad as it was in *Marks*: "The court may amend the order in form or substance at any time." MCL 771.2(2). Because the statutory provisions are materially the same as those analyzed by our Supreme Court in *Marks*, that analysis remains binding. Hence, once a sentencing court elects to sentence a defendant to probation, the court's authority to set or modify the terms of probation is subject to the limitations stated in MCL 771.2. See *Marks*, 340 Mich at 498. Although a sentencing court has near unfettered discretion to modify the terms and conditions of a defendant's probation during the period set by the Legislature, after that period has passed, the sentencing court loses the authority to "amend the order in form or substance." MCL 771.2(2); *Marks*, 340 Mich at 501-502.

The district court sentenced Judge to one year of probation in September 2010 and Hastings Mutual first asked the prosecutor and district court to order Judge to pay the required restitution in August 2011. Hastings Mutual also appeared for a hearing on its request in September 2011. Because the trial court had the authority to modify the terms applicable to Judge's probation for two years after his sentencing, see MCL 771.2(1) and *Marks*, 340 Mich at 501-502, it should have—at the very least—held a hearing to determine whether Judge's criminal course of conduct caused Hastings Mutual's financial harm. But it refused to protect Hastings Mutual's right to restitution.

Hastings Mutual then filed its complaint for superintending control with the circuit court in September 2012. It appears that Hastings Mutual may have filed its complaint before the expiration of the two-year maximum applicable to Judge's order of probation, but the circuit court—like the district court before it—did nothing to protect Hastings Mutual's right to restitution. The circuit court did not take any action until Hastings Mutual moved for entry of an order of superintending control in January 2013. When it finally did take action, the circuit court dismissed Hastings Mutual's complaint.

Although we believe the district court and circuit court disserved Hastings Mutual throughout these proceedings, we must reluctantly conclude that the circuit court did not err when it dismissed Hastings Mutual's complaint to the extent that Hastings Mutual had asked the circuit court to order the district court to modify Judge's probation to include an order for additional restitution. By January 2013, the district court no longer had the authority to alter the

terms of Judge's probation. MCL 771.2(1).² Accordingly, the circuit court could not order the district court to grant the requested relief.

D. PROSPECTIVE RELIEF

The circuit court could, however, take action to ensure that future victims were not disserved in the same manner. In its complaint, Hastings Mutual specifically asked the circuit court to order the district court "to order full restitution, as required by Michigan law, in all future instances." Similarly, in its motion for entry of an order of superintending control, Hastings Mutual reiterated that it wanted the circuit court to order the district court "to fully comply with the restitution statute in all future matters." Although Hastings Mutual did not allege that it was the district court's general practice to order less than full restitution for all victims, the fact that the district court deliberately refused to enforce, or even investigate, Hastings Mutual's constitutionally protected right to restitution suggests that the district court may not be in full compliance with the statutes governing victims' rights. A complaint for superintending control is an appropriate method for regulating an inferior court's general practices. See *In re Credit Acceptance Corp*, 273 Mich App at 598. Therefore, to the extent that Hastings Mutual might be able to show that the district court, as a matter of practice, refuses to order full restitution for all victims, the circuit court would have the discretion to grant appropriate relief.

Here, the circuit court dismissed Hastings Mutual's complaint without any discussion of Hastings Mutual's request for prospective relief. By completely failing to address this additional request for relief before dismissing Hastings Mutual's complaint in its entirety, the circuit court necessarily abused its discretion. See *Loutts v Loutts*, 298 Mich App 21, 24; 826 NW2d 152 (2012). The circuit court should have afforded Hastings Mutual an opportunity to establish its right to prospective relief. Consequently, we elect to remand this case to the circuit court for a hearing on Hastings Mutual's request for prospective relief. MCR 7.216(A)(7). After conducting the hearing, the circuit court shall make any necessary findings of fact and shall then determine whether to grant the requested relief. In order to facilitate any later appeal, the circuit court shall clearly state the grounds for exercising or declining to exercise its discretion to exercise its power of superintending control.

² Because this case involves a sentencing court's authority to modify a sentence of probation, we express no opinion as to whether there are time limits on a sentencing court's authority to amend an order of restitution or add restitution in other situations.

III. CONCLUSION

For the reasons already explained, the circuit court did not err to the extent that it denied Hastings Mutual's request for an order compelling the district court to modify the terms of Judge's probation to include additional restitution. However, the circuit court abused its discretion when it summarily dismissed Hastings Mutual's complaint without first determining whether and to what extent Hastings Mutual might be entitled to prospective relief. The circuit court should have held a hearing to consider the propriety of that request. For these reasons, we affirm in part, reverse in part, and remand for a hearing on Hastings Mutual's request for prospective relief.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly